

REFERENCE TITLE: **schools; assessments; surveys; informed consent**

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

HB 2088

Introduced by
Representatives Finchem: Leach, Mitchell, Norgaard, Rivero

AN ACT

AMENDING TITLE 15, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-117; RELATING TO PUPIL INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 15, chapter 1, article 1, Arizona Revised Statutes,
3 is amended by adding section 15-117, to read:

4 15-117. Surveys; assessments; pupil information; parental
5 permission and informed consent; exceptions; notice;
6 penalties; definitions

7 A. NOTWITHSTANDING ANY OTHER LAW, EACH SCHOOL DISTRICT, SCHOOL AND
8 CHARTER SCHOOL SHALL PROVIDE WRITTEN NOTICE TO AND OBTAIN WRITTEN INFORMED
9 CONSENT FROM THE PARENT IF THE PUPIL IS A MINOR OR FROM THE PUPIL IF THE
10 PUPIL IS AT LEAST EIGHTEEN YEARS OF AGE BEFORE ADMINISTERING TO ANY PUPIL ANY
11 ASSESSMENT OR SURVEY THAT SOLICITS ANY OF THE FOLLOWING:

12 1. ANY PUPIL PSYCHOLOGICAL DATA, INCLUDING:

13 (a) ANY ASSESSMENT OF NONCOGNITIVE SKILLS OR ATTRIBUTES, PSYCHOLOGICAL
14 RESOURCES, MINDSETS, LEARNING STRATEGIES, EFFORTFUL CONTROL, DISPOSITIONS,
15 SOCIAL SKILLS, ATTITUDES, INTERPERSONAL RESOURCES OR INTRAPERSONAL RESOURCES
16 OR ANY OTHER TYPE OF SOCIAL, EMOTIONAL OR PSYCHOLOGICAL PARAMETER.

17 (b) ANY DATA COLLECTED THROUGH AFFECTIVE COMPUTING, INCLUDING AN
18 ANALYSIS OF FACIAL EXPRESSIONS, BRAIN WAVE PATTERNS, SKIN CONDUCTANCE,
19 GALVANIC SKIN RESPONSE, HEARTRATE VARIABILITY, PULSE, BLOOD VOLUME, POSTURE
20 OR EYE-TRACKING OR ANY SIMILAR METHOD.

21 (c) ANY DATA COLLECTED THROUGH REAL-TIME ANALYSIS AND ADAPTIVE
22 TAILORING OF SUCCESSIVE QUESTIONS IN THE PROCESS OF TESTING, ASSESSING OR
23 SURVEYING, INCLUDING COMPUTERIZED ADAPTIVE TESTING AND PEDAGOGICAL AGENTS.

24 (d) ANY DATA COLLECTED THROUGH PREDICTIVE MODELING TO BE USED TO
25 DETECT BEHAVIORS, BELIEFS OR VALUE SYSTEMS OR FOR PREDICTING OR FORECASTING
26 PUPIL OUTCOMES.

27 2. PERSONAL INFORMATION ABOUT THE PUPIL, THE PUPIL'S FAMILY OR THE
28 PUPIL'S HOUSEHOLD, INCLUDING:

29 (a) CRITICAL APPRAISALS OF ANOTHER PERSON WITH WHOM A PUPIL HAS A
30 CLOSE RELATIONSHIP.

31 (b) GUN OR AMMUNITION OWNERSHIP.

32 (c) ILLEGAL, ANTISOCIAL, SELF-INCRIMINATING OR DEMEANING BEHAVIOR.

33 (d) INCOME OR OTHER FINANCIAL INFORMATION.

34 (e) LEGALLY RECOGNIZED PRIVILEGED OR ANALOGOUS RELATIONSHIPS, SUCH AS
35 RELATIONSHIPS WITH A LAWYER, PHYSICIAN OR MEMBER OF THE CLERGY.

36 (f) MEDICAL HISTORY OR MEDICAL INFORMATION.

37 (g) MENTAL HEALTH HISTORY OR MENTAL HEALTH INFORMATION.

38 (h) POLITICAL AFFILIATIONS, OPINIONS OR BELIEFS.

39 (i) PUPIL BIOMETRIC INFORMATION.

40 (j) THE QUALITY OF HOME INTERPERSONAL RELATIONSHIPS.

41 (k) RELIGIOUS PRACTICES, AFFILIATIONS OR BELIEFS.

42 (l) SELF-SUFFICIENCY.

43 (m) SEXUAL BEHAVIOR OR ATTITUDES.

44 (n) VOTING HISTORY.

1 B. NOTWITHSTANDING ANY OTHER LAW:

2 1. THE PARENT'S WRITTEN INFORMED CONSENT PURSUANT TO THIS SECTION IS
3 LIMITED TO THE SPECIFIC ASSESSMENT OR SURVEY REFERENCED IN THE OFFICIAL
4 WRITTEN NOTICE FROM THE SCHOOL DISTRICT OR CHARTER SCHOOL AND DOES NOT EXTEND
5 TO ANY SUBSEQUENT ASSESSMENT OR SURVEY PURSUANT TO SUBSECTION A OF THIS
6 SECTION.

7 2. FOR ANY PUPIL WHO IS AT LEAST EIGHTEEN YEARS OF AGE, THE PERMISSION
8 OR CONSENT THAT WOULD OTHERWISE BE REQUIRED FROM THE PUPIL'S PARENT PURSUANT
9 TO THIS SECTION IS REQUIRED ONLY FROM THE PUPIL.

10 3. THIS SECTION DOES NOT ALLOW SCHOOL DISTRICTS, CHARTER SCHOOLS,
11 SCHOOLS, TEACHERS OR OTHER SCHOOL EMPLOYEES TO ASSESS OR SURVEY PUPILS OR
12 COLLECT ANY PUPIL DATA RELATING TO MATTERS ADDRESSED BY SUBSECTION A OF THIS
13 SECTION WITHOUT WRITTEN INFORMED CONSENT FROM THE PARENT.

14 C. SUBSECTION A OF THIS SECTION DOES NOT PERMIT OR DENY SCHOOL
15 DISTRICTS, SCHOOLS, CHARTER SCHOOLS, TEACHERS OR OTHER SCHOOL EMPLOYEES THE
16 AUTHORITY TO ASSESS OR SURVEY PUPILS OR TO COLLECT ANY PUPIL DATA RELATING TO
17 MATTERS PRESCRIBED IN SUBSECTION A OF THIS SECTION.

18 D. NOTWITHSTANDING ANY OTHER LAW:

19 1. ALL ASSESSMENTS AND SURVEYS CONDUCTED PURSUANT TO SUBSECTION A OF
20 THIS SECTION SHALL BE APPROVED AND AUTHORIZED BY THE SCHOOL DISTRICT, SCHOOL
21 OR CHARTER SCHOOL. THE SCHOOL DISTRICT, SCHOOL OR CHARTER SCHOOL IS LIABLE
22 FOR ANY VIOLATION OF THIS PARAGRAPH AND IS SUBJECT TO THE PENALTIES
23 PRESCRIBED IN SUBSECTION P OF THIS SECTION. A PERSON WHO IS INJURED BY A
24 VIOLATION OF THIS PARAGRAPH MAY COMMENCE A CIVIL ACTION IN SUPERIOR COURT.

25 2. A TEACHER OR OTHER SCHOOL EMPLOYEE MAY NOT ADMINISTER ANY
26 ASSESSMENT OR SURVEY PURSUANT TO SUBSECTION A OF THIS SECTION WITHOUT WRITTEN
27 AUTHORIZATION FROM THE SCHOOL DISTRICT, SCHOOL OR CHARTER SCHOOL. ANY
28 TEACHER OR OTHER SCHOOL EMPLOYEE WHO VIOLATES THIS PARAGRAPH IS PERSONALLY
29 LIABLE FOR VIOLATIONS OF THIS PARAGRAPH AND IS SUBJECT TO THE PENALTIES
30 PRESCRIBED IN SUBSECTION Q OF THIS SECTION. ANY TEACHER OR OTHER SCHOOL
31 EMPLOYEE WHO ADMINISTERS ANY ASSESSMENT OR SURVEY PURSUANT TO SUBSECTION A OF
32 THIS SECTION THROUGH A SUBSTITUTE TEACHER, PARAPROFESSIONAL, OR OTHER SCHOOL
33 EMPLOYEE WITHOUT WRITTEN AUTHORIZATION FROM THE SCHOOL DISTRICT, SCHOOL OR
34 CHARTER SCHOOL SHALL BE HELD RESPONSIBLE FOR ANY VIOLATION OF THIS PARAGRAPH.
35 A PERSON WHO IS INJURED BY A VIOLATION OF THIS PARAGRAPH MAY COMMENCE A CIVIL
36 ACTION IN SUPERIOR COURT.

37 E. THIS SECTION APPLIES TO ALL ASSESSMENTS AND SURVEYS CONDUCTED
38 PURSUANT TO SUBSECTION A OF THIS SECTION:

39 1. REGARDLESS OF THE STATED PURPOSE OF THE ASSESSMENT OR SURVEY.

40 2. REGARDLESS OF THE QUANTITY OR PERCENTAGE OF QUESTIONS THAT SOLICIT
41 DATA PURSUANT TO SUBSECTION A OF THIS SECTION.

42 3. INCLUDING ASSESSMENTS OR SURVEYS THAT:

43 (a) QUESTION BELIEFS OR PRACTICES IN SEX, MORALITY OR RELIGION
44 PURSUANT TO SECTION 15-102.

45 (b) INCLUDE SEX EDUCATION INFORMATION PURSUANT TO SECTION 15-102.

1 (c) INCLUDE ANY INFORMATION REGARDING SEXUALITY PURSUANT TO SECTION
2 15-102.

3 4. INCLUDING WRITTEN, DIGITAL OR VERBAL ASSESSMENTS OR SURVEYS OR ANY
4 OTHER METHOD OF ASSESSMENT, SURVEY OR DATA COLLECTION.

5 5. INCLUDING NATIONAL, STATE OR MULTISTATE ASSESSMENTS OR SURVEYS.

6 F. THIS SECTION DOES NOT APPLY TO:

7 1. MENTAL HEALTH SCREENING PURSUANT TO SECTION 15-104.

8 2. CLASSROOM INSTRUCTION AND DISCUSSION ON SUBJECTS WITHIN THE PURVIEW
9 OF THE COURSE, EXCEPT FOR TOPICS OTHERWISE PROHIBITED WITHOUT PARENTAL
10 NOTIFICATION AND INFORMED CONSENT PURSUANT TO THIS SECTION, IF STATEMENTS BY
11 A PUPIL IN SUCH DISCUSSIONS DO NOT BECOME A PART OF THE PUPIL'S EDUCATIONAL
12 RECORD.

13 3. ASSIGNMENTS THAT DO NOT BECOME A PART OF A PUPIL'S EDUCATIONAL
14 RECORD, EXCEPT FOR TOPICS OTHERWISE PROHIBITED WITHOUT PARENTAL NOTIFICATION
15 AND INFORMED CONSENT PURSUANT TO THIS SECTION.

16 4. PRIVATE SCHOOLS.

17 G. SUBSECTION F OF THIS SECTION DOES NOT PERMIT OR DENY TEACHERS OR
18 OTHER SCHOOL EMPLOYEES THE AUTHORITY TO DISCUSS WITH PUPILS OR GIVE
19 ASSIGNMENTS RELATING TO MATTERS PRESCRIBED BY SUBSECTION A OF THIS SECTION.

20 H. NOTWITHSTANDING ANY OTHER LAW, A PENALTY MAY NOT BE IMPOSED ON A
21 PUPIL OR THE PARENT OF A PUPIL WHO DOES NOT PARTICIPATE IN ANY ASSESSMENT OR
22 SURVEY CONDUCTED PURSUANT TO SUBSECTION A OF THIS SECTION. PARTICIPATION IN
23 ANY ASSESSMENT OR SURVEY PURSUANT TO SUBSECTION A OF THIS SECTION IS NOT
24 REQUIRED:

25 1. TO DEMONSTRATE THAT A PUPIL HAS MET COMPETENCY REQUIREMENTS FOR ANY
26 GRADE LEVEL, COURSE OR SUBJECT.

27 2. FOR A PUPIL TO QUALIFY FOR PLACEMENT INTO ANY GRADE LEVEL, COURSE
28 OR SUBJECT, INCLUDING COLLEGE OR UNIVERSITY PLACEMENT TESTS.

29 3. FOR A PUPIL TO BE PROMOTED TO THE NEXT GRADE.

30 4. FOR A PUPIL TO RECEIVE CREDIT FOR ANY COURSE OR AS PART OF A LETTER
31 GRADE FOR ANY COURSE.

32 5. FOR A PUPIL TO GRADUATE FROM HIGH SCHOOL.

33 6. FOR A PUPIL TO OBTAIN A HIGH SCHOOL EQUIVALENCY DIPLOMA.

34 7. FOR A PUPIL TO PARTICIPATE IN ANY COURSE, PROGRAM OR ACTIVITY
35 OFFERED TO PUPILS WHO PARTICIPATE IN THE ASSESSMENT OR SURVEY PURSUANT TO
36 SUBSECTION A OF THIS SECTION.

37 I. A PARENT MAY ELECT IN WRITING IN THE MANNER PRESCRIBED IN THIS
38 SECTION FOR THAT PUPIL TO PARTICIPATE IN ASSESSMENTS OR SURVEYS CONDUCTED
39 PURSUANT TO SUBSECTION A OF THIS SECTION. A PARENT IS NOT REQUIRED TO
40 RESPOND TO A WRITTEN NOTICE PROVIDED BY A SCHOOL DISTRICT OR CHARTER SCHOOL
41 PURSUANT TO THIS SECTION. IF A PARENT DOES NOT RESPOND TO A WRITTEN NOTICE
42 TRANSMITTED BY A SCHOOL DISTRICT OR CHARTER SCHOOL PURSUANT TO THIS SECTION,
43 THE PARENT IS DEEMED NOT TO CONSENT FOR THAT PUPIL TO PARTICIPATE IN THE
44 ASSESSMENT OR SURVEY PURSUANT TO SUBSECTION A OF THIS SECTION.

1 J. A SCHOOL DISTRICT, SCHOOL OR CHARTER SCHOOL SHALL PROVIDE AN
2 ALTERNATIVE EDUCATIONAL ACTIVITY FOR ANY PUPIL WHOSE PARENT DOES NOT CONSENT
3 FOR THAT PUPIL TO PARTICIPATE IN AN ASSESSMENT OR SURVEY CONDUCTED PURSUANT
4 TO SUBSECTION A OF THIS SECTION.

5 K. NOTWITHSTANDING ANY OTHER LAW, ANY PUPIL WHOSE PARENT DOES NOT GIVE
6 WRITTEN INFORMED CONSENT FOR THAT PUPIL TO PARTICIPATE IN ANY ASSESSMENT OR
7 SURVEY PURSUANT TO SUBSECTION A OF THIS SECTION AND WHO ATTENDS THE
8 ALTERNATIVE EDUCATIONAL ACTIVITY PURSUANT TO THIS SECTION SHALL BE COUNTED
9 TOWARD DAILY ATTENDANCE AND AVERAGE DAILY MEMBERSHIP FOR THE SCHOOL PURSUANT
10 TO SECTION 15-901 AND MAY NOT BE COUNTED ABSENT FROM SCHOOL.

11 L. NOTWITHSTANDING ANY OTHER LAW, RESPONSES TO ANY ASSESSMENT OR
12 SURVEY PURSUANT TO SUBSECTION A OF THIS SECTION MAY NOT BE INCLUDED:

13 1. AS PART OF A SCHOOL ACADEMIC PERFORMANCE INDICATOR PURSUANT TO
14 SECTION 15-241, OR AS PART OF ANY OTHER SIMILAR SCHOOL RATING SYSTEM.

15 2. IN THE EDUCATION LEARNING AND ACCOUNTABILITY SYSTEM PURSUANT TO
16 SECTION 15-249, OR IN ANY OTHER SIMILAR SYSTEM.

17 3. IN THE STUDENT ACCOUNTABILITY INFORMATION SYSTEM PURSUANT TO
18 SECTION 15-756.10 OR 15-1041, OR IN ANY OTHER SIMILAR SYSTEM.

19 4. IN ANY SCHOOL RATING SYSTEM.

20 M. A PENALTY MAY NOT BE IMPOSED ON AND A REWARD MAY NOT BE GRANTED TO
21 A TEACHER, ADMINISTRATOR, OTHER SCHOOL EMPLOYEE, SCHOOL DISTRICT, SCHOOL OR
22 CHARTER SCHOOL BASED ON THE PUPIL PARTICIPATION RATE IN ANY ASSESSMENT OR
23 SURVEY CONDUCTED PURSUANT TO SUBSECTION A OF THIS SECTION.

24 N. THE PARENT MAY REQUEST AND INSPECT AND SHALL BE PROVIDED, FREE OF
25 CHARGE, THE ASSESSMENT OR SURVEY CONDUCTED PURSUANT TO SUBSECTION A OF THIS
26 SECTION, INCLUDING THE QUESTIONS ASKED, THE PUPIL'S ANSWERS, INSTRUCTIONS OR
27 DIRECTIONS GIVEN TO THE PUPIL AND OTHER SUPPLEMENTARY MATERIALS USED TO
28 ADMINISTER AND EVALUATE THAT PUPIL'S ASSESSMENT OR SURVEY. THE ASSESSMENT OR
29 SURVEY SHALL BE AVAILABLE FOR PARENTAL REVIEW AFTER THE RESULTS HAVE BEEN
30 POSTED OR WITHIN ONE HUNDRED TWENTY DAYS AFTER THE ADMINISTRATION OF THE
31 ASSESSMENT OR SURVEY, WHICHEVER OCCURS FIRST. THE SCHOOL DISTRICT, SCHOOL OR
32 CHARTER SCHOOL SHALL COMPLY WITH A PARENT'S REQUEST NO LATER THAN FORTY-FIVE
33 DAYS AFTER THE REQUEST IS SUBMITTED. THE SUPERINTENDENT OF PUBLIC INSTRUCTION
34 SHALL IMPLEMENT PROCEDURES TO CARRY OUT THE PURPOSES OF THIS SUBSECTION.

35 O. ANY WRITTEN NOTICE PROVIDED BY A SCHOOL DISTRICT OR CHARTER SCHOOL
36 PURSUANT TO THIS SECTION SHALL BE PRINTED IN TEN-POINT OR LARGER FONT AND:

37 1. SHALL INCLUDE:

38 (a) THE NAME OF THE SCHOOL DISTRICT, SCHOOL OR CHARTER SCHOOL THAT
39 APPROVED THE ASSESSMENT OR SURVEY.

40 (b) THE NAME OF THE ASSESSMENT OR SURVEY.

41 (c) THE DATE OR DATES ON WHICH THE ASSESSMENT OR SURVEY WILL BE
42 ADMINISTERED.

43 (d) THE METHOD OR METHODS OF COLLECTING DATA FOR THE ASSESSMENT OR
44 SURVEY CONDUCTED PURSUANT TO SUBSECTION A OF THIS SECTION. IF A COMPUTER IS
45 USED TO ADMINISTER OR RECORD THE DATA, THE NOTICE SHALL INCLUDE A STATEMENT

1 OF WHETHER THE DATA COLLECTED WILL BE TRANSMITTED ELECTRONICALLY FROM THE
2 COMPUTER OR THE LOCATION WHERE THE ASSESSMENT OR SURVEY IS ADMINISTERED.

3 (e) THE APPROXIMATE NUMBER OF HOURS THAT THE PUPIL WILL BE
4 ADMINISTERED THE ASSESSMENT OR SURVEY.

5 (f) THE TYPE OF DATA TO BE COLLECTED PURSUANT TO SUBSECTION A OF THIS
6 SECTION.

7 (g) THE REASONS FOR COLLECTION OF THE DATA.

8 (h) A STATEMENT INDICATING THAT THE PARENT'S WRITTEN INFORMED CONSENT
9 PURSUANT TO THIS SECTION IS LIMITED TO THE SPECIFIC ASSESSMENT OR SURVEY
10 REFERENCED IN THAT SPECIFIC WRITTEN NOTICE AND DOES NOT EXTEND TO ANY
11 SUBSEQUENT ASSESSMENT OR SURVEY.

12 2. SHALL REQUIRE, ON THE RIGHT SIDE OF THE PAPER, THE PARENT'S
13 INITIALS TO AFFIRMATIVELY ACKNOWLEDGE EACH OF THE FOLLOWING:

14 (a) THAT PARTICIPATION IN THE ASSESSMENT OR SURVEY IS VOLUNTARY AND
15 THAT WRITTEN PARENTAL CONSENT IS REQUIRED BEFORE THE PUPIL PARTICIPATES IN
16 THE ASSESSMENT OR SURVEY.

17 (b) THAT PUPILS WHO DO NOT PARTICIPATE IN THE ASSESSMENT OR SURVEY
18 SHALL BE PROVIDED AN ALTERNATIVE EDUCATIONAL ACTIVITY DURING THE TIME THE
19 ASSESSMENT OR SURVEY IS ADMINISTERED.

20 (c) THAT PENALTIES WILL NOT BE IMPOSED AGAINST A PUPIL OR THE PARENT
21 OF A PUPIL WHO DOES NOT PARTICIPATE IN THE ASSESSMENT OR SURVEY.

22 (d) THAT THE PARENT MAY REQUEST AND SHALL BE PROVIDED, FREE OF CHARGE,
23 THE DATA COLLECTED FROM THAT PUPIL BY THE ASSESSMENT OR SURVEY.

24 (e) THE PROCEDURE BY WHICH THE PARENT MAY REQUEST AND BE PROVIDED THE
25 DATA COLLECTED FROM THE PUPIL BY THE ASSESSMENT OR SURVEY.

26 (f) WHETHER THE PUPIL'S PERSONALLY IDENTIFIABLE DATA COLLECTED BY THE
27 ASSESSMENT OR SURVEY WILL BE AGGREGATED BY THE REMOVAL OF THAT PUPIL'S
28 PERSONAL INFORMATION.

29 (g) THE NAMES OF THE FEDERAL AND STATE AGENCIES, INSTITUTIONS AND
30 THIRD PARTIES THAT WILL HAVE ACCESS TO THE DATA COLLECTED BY THE ASSESSMENT
31 OR SURVEY, WHETHER THESE PARTIES WILL KEEP THIS DATA PRIVATE OR SHARE THIS
32 DATA WITH OTHER PARTIES AND WHETHER THESE PARTIES WILL DESTROY THIS DATA WHEN
33 THE PUPIL IS NO LONGER SERVICED BY THE SCHOOL DISTRICT, SCHOOL OR CHARTER
34 SCHOOL OR WHEN THE PUPIL REACHES EIGHTEEN YEARS OF AGE.

35 3. SHALL REQUIRE AND CLEARLY PROVIDE SPACE FOR:

36 (a) THE PUPIL'S NAME AND THE PARENT'S NAME.

37 (b) THE PARENT'S SIGNATURE AND THE DATE OF THE SIGNATURE.

38 4. IS NOT VALID WITHOUT ALL OF THE INFORMATION REQUIRED BY THIS
39 SUBSECTION.

40 5. SHALL BE RETAINED IN PHYSICAL OR ELECTRONIC FORM BY THE SCHOOL
41 DISTRICT OR CHARTER SCHOOL FOR TWO YEARS AFTER THE DATE OF THE ASSESSMENT OR
42 SURVEY.

43 P. NOTWITHSTANDING ANY OTHER LAW:

44 1. ANY SCHOOL DISTRICT, CHARTER SCHOOL OR SCHOOL THAT FAILS TO COMPLY
45 WITH ANY REQUIREMENT IMPOSED UNDER THIS SECTION WITH RESPECT TO ANY

1 INDIVIDUAL SHALL BE LIABLE FOR DAMAGES TO THE INJURED PARTY IN THE AMOUNT
2 DETERMINED UNDER PARAGRAPH 2 OF THIS SUBSECTION.

3 2. FOR AN INDIVIDUAL ACTION, THE SUM AWARDED FOR LIABILITY UNDER
4 PARAGRAPH 1 OF THIS SUBSECTION SHALL BE:

5 (a) IN THE CASE OF A FIRST VIOLATION, AN AMOUNT OF AT LEAST FIVE
6 HUNDRED DOLLARS PLUS THE COSTS OF THE ACTION AND REASONABLE ATTORNEY FEES.

7 (b) IN THE CASE OF A SECOND VIOLATION INVOLVING THE SAME PUPIL, AN
8 AMOUNT OF AT LEAST TWO THOUSAND FIVE HUNDRED DOLLARS PLUS THE COSTS OF THE
9 ACTION AND REASONABLE ATTORNEY FEES.

10 (c) IN THE CASE OF A THIRD OR ANY SUBSEQUENT VIOLATION INVOLVING THE
11 SAME PUPIL, AN AMOUNT OF AT LEAST TEN THOUSAND DOLLARS PLUS THE COSTS OF THE
12 ACTION AND REASONABLE ATTORNEY FEES.

13 3. THE COURT OR THE JURY MAY AWARD PUNITIVE DAMAGES IN ADDITION TO
14 THOSE SET FORTH IN PARAGRAPH 2 OF THIS SUBSECTION.

15 4. FOR THE PURPOSES OF THIS SUBSECTION, EACH VIOLATION OF THIS SECTION
16 SHALL BE CONSIDERED A SEPARATE VIOLATION IF IT INVOLVES A DIFFERENT
17 ASSESSMENT OR SURVEY PURSUANT TO SUBSECTION A OF THIS SECTION, OR IF IT
18 INVOLVES A DIFFERENT VERSION OF OR ADMINISTRATION OF THE SAME ASSESSMENT OR
19 SURVEY PURSUANT TO SUBSECTION A OF THIS SECTION.

20 5. THE INJURED PARTY OR PARTIES MAY COMMENCE A CIVIL ACTION IN
21 SUPERIOR COURT PURSUANT TO THIS SECTION OR THE PARTY OR PARTIES MAY REQUEST
22 THE ATTORNEY GENERAL TO COMMENCE A CIVIL ACTION ON THEIR BEHALF PURSUANT TO
23 THIS SECTION. ON REQUEST FROM THE INJURED PARTY OR PARTIES, THE ATTORNEY
24 GENERAL SHALL RESPOND WITHIN THIRTY DAYS. IF THE ATTORNEY GENERAL DENIES THE
25 REQUEST FOR CIVIL ACTION, THE INJURED PARTY OR PARTIES MAY PROCEED WITH A
26 CIVIL ACTION.

27 6. THE PROCEEDS FROM ANY MONETARY AWARD UNDER THIS SUBSECTION SHALL BE
28 PAID TO THE INJURED PARTY OR PARTIES.

29 7. IN THE CASE OF AN ADMISSION OF GUILT OR A SETTLEMENT BEFORE A
30 FORMAL CONVICTION OF A FIRST OR SECOND VIOLATION, DAMAGES SHALL BE ASSESSED
31 AND PAID PURSUANT TO THIS SUBSECTION.

32 Q. NOTWITHSTANDING ANY OTHER LAW:

33 1. ANY TEACHER OR OTHER SCHOOL EMPLOYEE WHO FAILS TO COMPLY WITH ANY
34 REQUIREMENT IMPOSED UNDER THIS SECTION WITH RESPECT TO ANY INDIVIDUAL PUPIL
35 SHALL BE LIABLE FOR DAMAGES TO THE INJURED PARTY OR PARTIES IN THE AMOUNT
36 DETERMINED UNDER PARAGRAPH 2 OF THIS SUBSECTION AND SUBJECT TO PENALTIES
37 UNDER PARAGRAPH 3 OF THIS SUBSECTION.

38 2. IN AN INDIVIDUAL ACTION, THE SUM AWARDED FOR LIABILITY UNDER
39 PARAGRAPH 1 OF THIS SUBSECTION SHALL BE:

40 (a) IN THE CASE OF A FIRST VIOLATION, AN AMOUNT OF AT LEAST ONE
41 HUNDRED DOLLARS PER INCIDENT, PLUS THE COSTS OF THE ACTION AND REASONABLE
42 ATTORNEY FEES.

43 (b) IN THE CASE OF A SECOND VIOLATION BY THE SAME TEACHER OR OTHER
44 SCHOOL EMPLOYEE, AN AMOUNT OF AT LEAST TWO HUNDRED FIFTY DOLLARS PLUS THE
45 COSTS OF THE ACTION AND REASONABLE ATTORNEY FEES.

1 3. ON CONVICTION OF A SECOND VIOLATION PURSUANT TO THIS SUBSECTION:
2 (a) THE CLERK OF THE SUPERIOR COURT SHALL NOTIFY THE STATE BOARD OF
3 EDUCATION, WHICH SHALL DECLARE THE TEACHER OR OTHER SCHOOL EMPLOYEE GUILTY OF
4 UNPROFESSIONAL CONDUCT, AND IF THE TEACHER IS IN POSSESSION OF A TEACHER'S
5 CERTIFICATE THE BOARD SHALL PERMANENTLY REVOKE IT.
6 (b) THE TEACHER OR OTHER SCHOOL EMPLOYEE SHALL BE TERMINATED FROM
7 EMPLOYMENT AND SHALL BE PROHIBITED FROM FUTURE STATE EMPLOYMENT.
8 4. THE COURT OR THE JURY MAY AWARD PUNITIVE DAMAGES IN ADDITION TO
9 THOSE SET FORTH IN PARAGRAPH 2 OF THIS SUBSECTION.
10 5. CONVICTION FOR A VIOLATION INVOLVING ONE OR MORE INCIDENTS,
11 PURSUANT TO PARAGRAPH 2, SUBDIVISION (b) OF THIS SUBSECTION, SHALL BE
12 CONSIDERED A SECOND VIOLATION IF THE SUBSEQUENT INCIDENTS OCCUR AFTER THE
13 TEACHER OR OTHER SCHOOL EMPLOYEE HAS BEEN FOUND GUILTY OF A FIRST VIOLATION
14 OR DAMAGES HAVE BEEN AWARDED PURSUANT TO THIS SECTION, OR BOTH.
15 6. THE INJURED PARTY OR PARTIES MAY COMMENCE A CIVIL ACTION IN
16 SUPERIOR COURT PURSUANT TO THIS SECTION OR THE PARTY OR PARTIES MAY REQUEST
17 THE ATTORNEY GENERAL TO COMMENCE A CIVIL ACTION ON THEIR BEHALF PURSUANT TO
18 THIS SECTION. ON REQUEST FROM THE INJURED PARTY OR PARTIES, THE ATTORNEY
19 GENERAL SHALL RESPOND WITHIN THIRTY DAYS. IF THE ATTORNEY GENERAL DENIES THE
20 REQUEST FOR CIVIL ACTION, THE INJURED PARTY OR PARTIES MAY PROCEED WITH A
21 CIVIL ACTION.
22 7. THE PROCEEDS FROM ANY JUDICIAL AWARD SHALL GO TO THE INJURED PARTY
23 OR PARTIES.
24 8. IN THE CASE OF AN ADMISSION OF GUILT OR A SETTLEMENT BEFORE FORMAL
25 CONVICTION OF A FIRST OR SECOND VIOLATION, DAMAGES AND PENALTIES SHALL BE
26 ASSESSED PURSUANT TO THIS SUBSECTION.
27 9. A PROVISION OF THIS SECTION OR ANY OTHER SECTION, TITLE, RULE,
28 REGULATION, LEGAL OPINION OR CASE LAW SHALL NOT PRECLUDE CRIMINAL PROSECUTION
29 OF A TEACHER OR OTHER SCHOOL EMPLOYEE WHO IS FOUND GUILTY OF VIOLATING THIS
30 SECTION, PURSUANT TO ANY APPLICABLE CRIMINAL LAW.
31 10. THIS SECTION DOES NOT PRECLUDE MULTIPLE INDIVIDUAL ACTIONS,
32 CONCURRENTLY OR OTHERWISE, AGAINST THE SAME TEACHER OR OTHER SCHOOL EMPLOYEE
33 ON BEHALF OF ONE OR MORE INDIVIDUAL PUPILS PURSUANT TO THIS SUBSECTION.
34 R. FOR THE PURPOSES OF THIS SECTION:
35 1. "ADAPTIVE" MEANS THE TAILORING AND SELECTION OF SUCCESSIVE
36 QUESTIONS BASED ON THE RESPONSES GIVEN AND INCLUDES ANY METHOD OF EFFECTING
37 THIS PROCESS IN TESTING, ASSESSING OR SURVEYING, INCLUDING THE USE OF
38 COMPUTERS.
39 2. "AFFECTIVE COMPUTING" MEANS SYSTEMS AND DEVICES THAT CAN OR ATTEMPT
40 TO RECOGNIZE, INTERPRET, PROCESS OR SIMULATE ASPECTS OF HUMAN FEELINGS OR
41 EMOTIONS.
42 3. "AGGREGATED" MEANS REPORTED FOR THE POPULATION AS A WHOLE.
43 4. "ASSESS" MEANS TO ADMINISTER AN ASSESSMENT.

1 5. "ASSESSMENT" MEANS A DOCUMENTATION, ANALYSIS OR EVALUATION OF A
2 PUPIL'S ATTITUDES, BEHAVIORS, BELIEFS, EXPERIENCES, OPINIONS OR THOUGHTS THAT
3 BECOMES A PART OF THE PUPIL'S EDUCATIONAL RECORD.

4 6. "ASSIGNMENT" MEANS WRITTEN OR SPOKEN WORK THAT A PUPIL IS REQUIRED
5 OR GIVEN THE CHOICE TO DO AS PART OF A COURSE OF STUDY.

6 7. "COMPETENCY REQUIREMENTS" MEANS THE MINIMUM STANDARDS OF KNOWLEDGE
7 AND SKILLS THAT MUST BE DEMONSTRATED BY A PUPIL TO ADVANCE TO THE NEXT LEVEL,
8 ACHIEVE CREDIT FOR A CERTAIN COURSE OR SUBJECT OR GRADUATE FROM A PROGRAM OF
9 STUDY.

10 8. "COMPUTER" MEANS A PROGRAMMABLE ELECTRONIC DEVICE THAT CAN STORE,
11 RETRIEVE AND PROCESS DATA.

12 9. "COMPUTERIZED ADAPTIVE TESTING" MEANS USING A COMPUTER TO TEST,
13 ASSESS OR SURVEY BY SUCCESSIVELY SELECTING QUESTIONS FOR THE PURPOSE OF
14 MAXIMIZING THE PRECISION OF RESULTS BASED ON WHAT IS KNOWN ABOUT THE PUPIL
15 FROM PREVIOUS RESPONSES.

16 10. "EDUCATIONAL DATA MINING" MEANS TECHNIQUES, TOOLS AND RESEARCH
17 INTENDED TO EXTRACT MEANING AUTOMATICALLY FROM DATA COLLECTED BY OR RELATED
18 TO A PUPIL'S LEARNING ACTIVITIES IN EDUCATIONAL SETTINGS.

19 11. "EDUCATIONAL RECORD" MEANS INFORMATION THAT IS KEPT ABOUT A
20 STUDENT IN PHYSICAL OR DIGITAL FORMAT AND THAT MAY BE IN THE POSSESSION OF
21 THE PUPIL'S TEACHER, SCHOOL, CHARTER SCHOOL OR SCHOOL DISTRICT, AN ELECTED OR
22 APPOINTED GOVERNMENT OFFICIAL, A GOVERNMENT AGENCY OR ANY THIRD PARTY WITH
23 WHICH THE PUPIL OR THE PUPIL'S PARENT DID NOT SHARE THE INFORMATION.
24 EDUCATIONAL RECORD DOES NOT INCLUDE AN ASSIGNMENT IN THE POSSESSION OF A
25 TEACHER WHILE IT IS BEING GRADED.

26 12. "PARENT" HAS THE SAME MEANING PRESCRIBED IN SECTION 15-101, EXCEPT
27 THAT PARENT DOES NOT MEAN THIS STATE IF THE PUPIL IS A WARD OF THE STATE.

28 13. "PEDAGOGICAL AGENT" MEANS A SIMULATED, HUMAN-LIKE INTERFACE
29 BETWEEN THE PUPIL AND THE TESTING, ASSESSMENT OR SURVEY DEVICE IN A
30 COMPUTERIZED ADAPTIVE TESTING PROCESS THAT IS DESIGNED TO MODEL THE TYPE OF
31 INTERACTIONS BETWEEN A PUPIL AND ANOTHER PERSON.

32 14. "PREDICTIVE MODELING" MEANS THE USE OF EDUCATIONAL DATA MINING
33 METHODS TO MAKE PREDICTIONS ABOUT FUTURE BEHAVIORS OR PERFORMANCE.

34 15. "PSYCHOLOGICAL DATA" MEANS ANY PUPIL INFORMATION RELATING TO THE
35 MIND OR EMOTIONS THAT CAN BE COLLECTED THROUGH AFFECTIVE COMPUTING,
36 ASSESSMENTS, SURVEYS, PREDICTIVE MODELING OR ANY OTHER METHOD.

37 16. "REAL-TIME" MEANS ANY ELECTRONIC PROCESS OCCURRING IN THE PRESENT
38 WHICH CAN ADJUST AND RESPOND BASED ON USER INPUT.

39 17. "SURVEY" MEANS:

40 (a) WHEN USED AS A NOUN, AN INSTRUMENT THAT INVESTIGATES THE
41 ATTITUDES, BEHAVIORS, BELIEFS, EXPERIENCES, OPINIONS OR THOUGHTS OF A PUPIL
42 OR GROUP OF PUPILS.

43 (b) WHEN USED AS A VERB, TO INVESTIGATE THE ATTITUDES, BEHAVIORS,
44 BELIEFS, EXPERIENCES, OPINIONS OR THOUGHTS OF A PUPIL OR GROUP OF PUPILS.

1 18. "TEST" MEANS:

2 (a) WHEN USED AS A NOUN, AN INSTRUMENT THAT MEASURES KNOWLEDGE OR
3 SKILLS IN READING, WRITING, MATHEMATICS, SOCIAL STUDIES OR SCIENCE.

4 (b) WHEN USED AS A VERB, TO ADMINISTER AN INSTRUMENT THAT MEASURES
5 KNOWLEDGE OR SKILLS IN READING, WRITING, MATHEMATICS, SOCIAL STUDIES OR
6 SCIENCE.

7 Sec. 2. Short title

8 This act may be cited as the "Pupil and Teacher Protection Act".